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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CLEARY,
PLAINTIFF

v.

KENNETH KYLER, et al.,
DEFENDANT'S

CIVIL ACTION NO.1:CV-00-2125
(JUDGE CALDWELL)

FILED
HARRISBURG, PA

APR 30 2002

AFFIDAVIT IN SUPPORT OF
DENIAL OF SUMMARY JUDGEMENT

MARY E. D'ANDREA, CLERK
Per MD

JOHN CLEARY, BEING DULY SWORN, DEPOSED SAYS:

1. I AM THE PLAINTIFF IN THE ABOVE MATTER.

2. DEFENDANT'S ADMITTANCE TO THE ACTS, ACTIONS, AND/OR INACTIONS OF THE SAID MATTERS THAT ARE PRESENTED IN THE COMPLAINT AND THROUGH OUT THEIR FILINGS OF MOTIONS ARE ESTABLISHING GUILT ON ONE HAND.

3. ON THE OTHER HAND, REGULATIONS AND PRACTICES WHICH RESTRICT THE RIGHT OF PRISONER'S TO SEND AND RECEIVE MAIL WILL BE DECLARED UNCONSTITUTIONAL IN THE ABSENCE OF A LEGITIMATE GOVERNMENT INTEREST OR WHERE THE CONNECTION BETWEEN THE REGULATION AND STATE IS SO REMOTE AS TO RENDER THE POLICY ARBITRARY OR IRRATIONAL. SEE

THONGVANH V. THALACKER, 17 F.3d 256 (8th CIR. 1994).

THEREFORE, PLAINTIFF'S FINDINGS ARE THAT 'THE SUMMARY JUDGEMENT CONCERNS RAISED BY THE DEFENDANT'S ARE MERELY A BELATED ATTEMPT TO JUSTIFY THEIR ACTIONS'.

BEING DULY SIGNED THIS 20, DAY OF APRIL, 2002. BEING DULY SWORN AND DEPOSED, JOHN CLEARY STATES THIS AFFIDAVIT TO THE PENALTY'S OF LAW 18 U.S.C. 1746.

/s/ John Cleary
JOHN CLEARY
P.O. BOX 99901
PITTSBURGH, PA. 15233